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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MIKE VOIGT, ALBERT KLEIDER, and KURT NEEF

Appeal 2009-006610
Application 10/552,225
Technology Center 3700

Decided: April 30, 2010

Before: JENNIFER D. BAHR, STEFAN STAICOVICI, and KEN B. BARRETT, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Mike Voigt et al. (Appellants) appeal under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 15-26 and 28-30 under 35 U.S.C. § 102(b) as being anticipated by Rudolf '353 (EP 0 978 353 A2, published Feb. 9, 2000) and claims 24, 25, and 27 under 35 U.S.C. § 102(b) as being anticipated by Rudolf '635 (US 4,924,635, issued May 15, 1990). Claims 1-14 have been canceled. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellants' claimed invention is directed to a power tool having a rotatably driven insertion tool provided with a guard for covering at least portions of the insertion tool. Spec. 1:13-14.

Claims 15 and 24, reproduced below, are illustrative of the claimed subject matter.

> 15. A system composed of a guard (16) and a power tool, with a rotation-prevention means (20), wherein said rotation-prevention means is provided with a blocking means (32, 40) on a guard side and with a corresponding stop means (34, 42) on a power tool side and with an attachment means (28) for clamping the guard (16) to the power tool,
>
> wherein said stop means (34, 42) limits rotation of the guard (16) in the event of shattering of an insertion tool (14) in an operation mode of the power tool.
>
> 24. A power tool with an electric motor located in a housing (10), the electric motor rotatably driving an insertion tool (14), wherein a rotation-prevention means (20) is provided that at least prevents the insertion tool (14) from being released in a direction of an operator.

SUMMARY OF DECISION

We AFFIRM.

OPINION

Rejection of claims 15-26 and 28-30 as anticipated by Rudolf '353

Issue

Appellants have grouped all the claims together in arguing against this rejection. Thus, in accordance with 37 C.F.R. § 41.37(c)(1)(vii) (2007), we select claim 15 as the representative claim, with the remaining claims standing or falling with claim 15.

The Examiner found that the rotation-prevention means of claim 15 reads on the locking lug 31 (a blocking means on a guard side) and the groove 32 (stop means on a power tool side) of Rudolf '353. Ans. 4. Appellants argue that Rudolf '353 only discloses use of the locking lug 31 and groove 32 for proper coding of the grinder to the guard (hood 14), and that these elements are "not intended or appropriate for securing" the hood in the event of shattering of the grinding disc 13. App. Br. 5. Appellants argue that because the locking lug 31 of Rudolf '353 has a rounded edge, and because it is embodied as an extension of hood part 15 of hood 14, and thus is constructed of a thin layer, the locking lug 31 is not intended to sustain high forces. App. Br. 6. Additionally, Appellants argue that the positioning of the locking lug 31 of Rudolf '353 at the edge of hood part 15 does not provide a robust arrangement "to stop extremely high forces." *Id.* Consequently, Appellants argue that the subject matter of claim 15 is not anticipated by Rudolf '353. *Id.* In response, the Examiner found that "the claims are anticipated by Rudolf '353 because the same structural limitations

are capable of performing the same functions recited in the claims." Ans. 5. Accordingly, the issue joined in this appeal is whether the locking lug 31 and groove 32 of Rudolf '353 satisfy the rotation-prevention means element of Appellants' independent claim 15.

Our Findings of Facts Pertinent to the Issue

In a first exemplary embodiment, Appellants' rotation-prevention means 20 comprises a blocking means in the form of a stop cam 32, on the guard side, formed in the clamp 26 for attaching the guard 16 to collar 24, and a limiting groove 34 provided in collar 24 forming a stop means for stop cam 32. Spec. 5:21-23 and 25-27, fig. 4. The stop cam 32 is formed by pressing a portion of clamp 26 through toward the inside of clamp 26. Spec. 5:24.

In a second exemplary embodiment, Appellants' rotation-prevention means comprises a stop 42 provided on housing 10 and a blocking lug 40 or 40' formed on guard 16 "out of a wall [or the sheet metal] of guard 16 . . . by being partially punched out and bent." Spec. 6:18-27.

In the first and second embodiments of Appellants' rotation-prevention means, the blocking means is formed from the material of either the guard itself or the attachment clamp 26. In either embodiment, the stop limits a possible rotation of the guard 16 around an axis of rotation 18 to an angular range α, if the guard 16 is rotated when insertion tool 14 shatters. Spec. 5:27-29. The blocking means blocks rotation independently of the torque used to tighten an attachment screw 28 used to fix clamp 26 around collar 24 by being stopped by an end of the limiting groove 34. Spec. 5:29 to 6:2.

Rudolf '353 discloses a grinding machine/hood assembly comprising a protective hood 14 clamped to the grinding machine by a tension ring 18 tensioned by a tensioning device 17. Rudolf '353, para. [0038]. A locking lug 31 is formed on the interior area 28 of hood part 15 and protrudes radially toward the spindle neck 12 through an opening 30 in tension ring 16. Rudolf '353, para. [0039]. The locking lug 31 can be manufactured as a one-piece construction with the hood part 15, for example, with a stamping process. *Id.* The locking lug 31 of Rudolf '353 engages into an appropriately shaped recess 34, comprising an axially extending insertion groove 33 and a circumferential groove 32, on spindle neck 12. Rudolf '353, para. [0040]. The circumferential groove 32 ends in a stop, as illustrated in figure 4, such that rotation of the hood 14 is limited to an angular range predetermined by the circumferential groove 32. *Id.*

Analysis

Rudolf '353, like Appellants, discloses a hood rotation-limiting means comprising a lug, formed by punching or stamping the sheet material of the hood, for engaging with a circumferential groove of limited length formed in the spindle or collar of the power tool. In other words, the structures of Rudolf '353 and Appellants appear to be substantially identical. We find that this substantial identity of structure is sufficient to support the Examiner's finding that the lug 31 and groove 32 of Rudolf '353 are capable of blocking/limiting rotation of the hood in the event of shattering of the grinding disc, in the same manner as Appellants' stop cam or lug and limiting groove, so as to shift the burden to Appellants to show that this is not the case. *See In re King*, 801 F.2d 1324, 1327 (Fed. Cir. 1986) (once the PTO establishes a prima facie case of anticipation based on inherency, the

burden shifts to appellant to prove that the prior art does not possess the characteristic at issue).

Appellants argue that the rounded edge of the lug 31 of Rudolf '353 (*see* Rudolf '353, fig. 2) and the positioning of the lug 31 at the edge of hood part 15 somehow limits its ability to prevent/limit rotation. Appellants have not, however, provided any evidence or cogent technical reasoning as to why this would be the case, and it is not apparent to us why either the rounded edge or positioning of lug 31 would render the lug 31 incapable of limiting rotation. Attorney's arguments in a brief cannot take the place of evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Moreover, while Appellants allege that the lug 31 of Rudolf '353 is not sufficiently robust "to stop extremely high forces," the Examiner correctly points out that Appellants' claims do not specify a particular force level which the rotation-prevention means must withstand (Ans. 5). Finally, the fact that the stop cam or lug of Appellants' rotation-prevention means, like that of Rudolf '353, is formed by stamping or punching the hood wall material belies Appellants' argument that formation of the lug 31 of Rudolf '353 from the hood sheet material would render the lug too thin to possess the robustness required of Appellants' claimed rotation-prevention means.

Conclusion

The record before us is sufficient to establish that the locking lug 31 and groove 32 of Rudolf '353 satisfy the rotation-prevention means element of Appellants' independent claim 15. Thus, we sustain the rejection of claim 15 and claims 16-26 and 28-30, which fall with claim 15, as being anticipated by Rudolf '353.

Rejection of claims 24, 25, and 27 as anticipated by Rudolf '635

The Examiner made very specific findings as to how the elements in these claims read on the structure of Rudolf '635. *See* Ans. 4-5. In particular, the Examiner found that the claimed rotation-prevention means reads on the stop means (recesses 30 in holding part 25 of hood 8) and blocking means (pin 31) of Rudolf. *Id.*; *see also* Rudolf '635, col. 4, ll. 28-60, figs. 1 and 2.

In contesting the rejection, Appellants simply argue that "Rudolf '635 fails to disclose any mechanism which provides a security mechanism in the form of a rotation-prevention means to prevent the insertion tool from being released in the direction of an operator." App. Br. 7. Appellants do not point out any error in the findings of the Examiner. Most notably, Appellants do not point out why the recesses 30 and pin 31 of Rudolf '635 do not form a rotation-prevention means that prevents the insertion tool (grinding disc 6) from being released in a direction of an operator. Accordingly, we are not convinced that the Examiner erred in finding that the subject matter of claim 24 is anticipated by Rudolf '635. We sustain the rejection of claim 24 and dependent claims 25 and 27, which Appellants have not argued separately from claim 24. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

DECISION

The Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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